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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
E-filing *[Signature]*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

AARON PALM, on behalf of himself and
all others similarly situated,

Plaintiffs,

vs.

SUR LA TABLE, INC., a Corporation,
and DOES 1-25,

Defendants.

CV 12 1250 JCS
CASE NO. _____
**DEFENDANT SUR LA TABLE,
INC.'S NOTICE OF REMOVAL OF
CIVIL ACTION FROM STATE
COURT**

[San Francisco Superior Court, No. CGC-
12-518159]

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**TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA, AND TO PLAINTIFF AARON
PALM AND HIS COUNSEL OF RECORD:**

PLEASE TAKE NOTICE THAT, pursuant to 28 U.S.C. §§ 1332, 1441, 1446, 1453, 1711-1715 and the Class Action Fairness Act of 2005 ("CAFA"), Defendant Sur La Table, Inc. (hereinafter "Sur La Table") hereby removes to the United States District Court for the Northern District of California the above-captioned state court action, originally filed as Case No. CGC-12-518159 in San Francisco County Superior Court, State of California. Removal is proper on the following grounds:

TIMELINESS OF REMOVAL

1. Plaintiff Aaron Palm (hereinafter "Plaintiff") filed an individual and class action Complaint against Sur La Table on February 10, 2012, in San Francisco County Superior Court, State of California, Case No. CGC-12-518159, captioned *Aaron Palm, on behalf of himself and all others similarly situated v. Sur La Table, Inc.* Pursuant to 28 U.S.C. § 1446(a), true and correct copies of the Summons and Complaint are attached as Exhibits A and B to the Declaration of Michele L. Maryott ("Maryott Decl.") filed concurrently herewith. Plaintiff served Sur La Table, through its agent for service of process, Business Filings Incorporated, with the Summons and Complaint on February 13, 2012. *See* Maryott Decl., Exh. C. This notice of removal is therefore timely pursuant to 28 U.S.C. § 1446(b) because it is filed within 30 days after service was completed.

2. On March 13, 2012, Sur La Table filed its Answer to the Complaint. Maryott Decl., Exh. D. There have been no other proceedings in this action.

SUMMARY OF PLAINTIFF'S ALLEGATIONS AND FACTS

GIVING RISE TO JURISDICTION AND REMOVAL

3. Plaintiff's Complaint alleges that Sur La Table violated state wage and hour laws by, *inter alia*, failing to provide rest breaks, failing to provide accurate wage statements, and failing to pay unpaid wages immediately upon discharge. *See*

1 Maryott Decl., Exh. B (Complaint, ¶¶ 32-38). Plaintiff seeks to represent a class of
 2 Sur La Table employees described as follows:

3 Non-exempt hourly employees at any of Defendant's stores in California
 4 who worked either (a) less than four but more than three-and-a-half
 5 hours, or (b) four hours plus a major fraction of four hours, in a day
 6 during the course of their employment at any time during the four years
 7 prior to the filing of this law suit and until final judgment is entered.

8 *Id.*, ¶ 21.

9 4. Specifically, Plaintiff alleges that he and the putative class members were
 10 owed "premium wages" on the missed rest breaks (*id.*, ¶ 32), "penalties and attorney's
 11 fees under Lab[or] Code § 226(e)" for failure to provide accurate wage statements (*id.*,
 12 ¶ 36), "penalties under Lab[or] Code § 203" for failure to pay unpaid wages
 13 immediately upon discharge (*id.*, ¶ 38), and "all applicable penalties" arising from the
 14 alleged unlawful conduct. *Id.*, "Prayer for Relief" ¶ 5.

15 5. In addition, Plaintiff asserts a claim styled as "whistleblower retaliation in
 16 violation of public policy" in connection with the termination of his employment with
 17 Sur La Table. *Id.*, ¶ 29. In connection with this individual claim, Plaintiff claims that
 18 he suffered "lost wages, severe emotional distress, physical pain and suffering, and
 19 injuries." *Id.*, ¶ 30. Plaintiff also claims he should be entitled to "an award of
 20 exemplary or punitive damages." *Id.*, ¶ 31.

21 6. Sur La Table denies any liability in this case and intends to vigorously
 22 oppose Plaintiff's individual claim as well as class certification of the putative class
 23 claims. Sur La Table believes that class treatment is completely inappropriate under
 24 the circumstances here and that there are many differences between the named
 25 Plaintiff and the various employees Plaintiff seeks to represent in his Complaint. Sur
 26 La Table expressly reserves all rights in this regard. Significantly, the Ninth Circuit
 27 has explicitly held that a defendant need not concede liability on any of a plaintiff's
 28 claims in order to establish the amount in controversy, but need only present evidence

1 showing how much is “in play.” *Lewis v. Verizon Communications, Inc.*, 627 F.3d
 2 395, 401 (9th Cir. 2010). Accordingly, for purposes of the jurisdictional requirements
 3 *for removal only*, Sur La Table has a good faith basis to believe that the **allegations** in
 4 Plaintiff’s Complaint put in controversy, in the aggregate, an amount that exceeds \$5
 5 million for the purported class claims and \$75,000 for Plaintiff’s individual claims.
 6 *See* 28 U.S.C. § 1332.

7 **A. Based on Plaintiff’s Allegations, There Are More Than 100 Members in**
 8 **The Proposed Class**

9 7. According to Plaintiff, the class consists of “non-exempt employees in
 10 Defendant’s stores in California” who worked either “less than four but more than
 11 three-and-half hours” or “four hours plus a major fraction of four hours” in a day
 12 during the course of their employment “at any time during the four years prior to the
 13 filing of this law suit and until final judgment is entered.” Maryott Decl., Exh. B
 14 (Complaint, ¶ 21).

15 8. Based on a good faith review of information currently available, Sur La
 16 Table estimates that there were approximately 2,963 non-exempt employees (133 full-
 17 time and 2,830 part-time) in California from February 2008 to February 2012. *See*
 18 Declaration of Mary S. Jensen (“Jensen Decl.”), ¶ 6.

19 **B. Sur La Table and Plaintiff Are Citizens of Different States**

20 9. Plaintiff alleges that he is a resident of and/or is domiciled in the State of
 21 California. *See* Maryott Decl., Exh. B (Complaint at ¶ 3 [“Plaintiff Aaron Palm is an
 22 individual who was, at all relevant times herein, a resident of the State of
 23 California.”]). As such, Plaintiff is a citizen of California.

24 10. At the time this action was commenced, and at all times since, including
 25 at the time this Notice of Removal is filed, Sur La Table was and is a corporation
 26 organized under the laws of the State of Washington with its principal place of
 27 business in Seattle, Washington. Jensen Decl., ¶ 3. Pursuant to 28 U.S.C. § 1332(c), a
 28 corporation shall be deemed to be a citizen of any State by which it has been

1 incorporated and of the State where it has its principal place of business. The
 2 Supreme Court recently interpreted the phrase “principal place of business” to mean
 3 “the place where a corporation’s officers direct, control, and coordinate the
 4 corporation’s activities,” *i.e.*, its “nerve center,” which “should normally be the place
 5 where the corporation maintains its headquarters, provided that the headquarters is the
 6 actual center of direction, control, and coordination.” *Hertz Corp. v. Friend*, 130 S.
 7 Ct. 1181, 1192 (2010). Sur La Table’s headquarters located in Seattle, Washington
 8 constitute its “nerve center” under the test adopted in *Hertz* because:

- 9 (a) Sur La Table’s corporate decisions, including its operational, executive,
 10 administrative and policymaking decisions, are made in Seattle,
 11 Washington. Jensen Decl., ¶ 4.
- 12 (b) The majority of Sur La Table’s executive officers principally conduct their
 13 business in Washington. *Id*
- 14 (c) The administrative functions crucial to Sur La Table’s day-to-day
 15 operations are conducted in Seattle, Washington. The respective officers
 16 for these departments work in Seattle, Washington, and are responsible for
 17 developing policies and protocols for Sur La Table’s nationwide
 18 operations. *Id*.

19 Accordingly, Sur La Table is and has been at all relevant times a citizen of the State of
 20 Washington.

21 11. Plaintiff also named as defendants Does 1 through 25. For purposes of
 22 removal jurisdiction, the “citizenship of defendants sued under fictitious names shall
 23 be disregarded.” 28 U.S.C. § 1441(b).

24 **C. The Amount Placed In Controversy By Plaintiff’s Class Claims Exceeds \$5**
 25 **Million**

26 12. Where, as here, a plaintiff’s state court complaint does not specify a
 27 particular amount of damages, defendants are only required to prove by a
 28 preponderance of the evidence that the amount in controversy exceeds \$5 million.

1 *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 699 (9th Cir. 2007); *Korn v. Polo*
 2 *Ralph Lauren Corp.*, 536 F. Supp. 2d 1199, 1204 (E.D. Cal. 2008). The burden on
 3 defendants is “not daunting, as courts recognize that under this standard, a removing
 4 defendant is *not* obligated to research, state, and prove the plaintiff’s claims for
 5 damages.” *Korn*, 536 F. Supp. 2d at 1204-05 (internal quotation omitted) (emphasis
 6 in original).

7 **1. Plaintiff’s Claim for Waiting Time Penalties Puts \$3,121,434.00 in**
 8 **Controversy**

9 13. In connection with Plaintiff’s claim that he and the putative class
 10 members did not receive all wages for which they were entitled during their
 11 employment as a result of Sur La Table’s alleged failure to compensate employees for
 12 missed rest breaks, Plaintiff alleges that every putative class member who ended
 13 his/her employment with Sur La Table during the class period is entitled to recovery
 14 of waiting time penalties pursuant to California Labor Code section 203. Maryott
 15 Decl., Exh. B (Complaint, ¶ 38).

16 14. If an employer fails to pay all wages due an employee at the time of
 17 termination, as required by Labor Code section 201, or within 72 hours after
 18 resignation, as required by Labor Code section 202, then the wages “shall continue as
 19 a penalty from the due date thereof at the same rate until paid or until an action
 20 therefore is commenced,” for up to a maximum of 30 days. Cal. Lab. Code § 203. An
 21 employer may not be liable for penalties if a good faith dispute exists as to whether the
 22 wages are owed. Further, to be liable for waiting time penalties, an employer’s failure
 23 to pay wages within the statutory time frame must be *willful*: “A willful failure to pay
 24 wages within the meaning of Labor Code Section 203 occurs when an employer
 25 *intentionally* fails to pay wages to an employee when those wages are due.” 8 Cal.
 26 Code Regs., § 13520 (emphasis added). Sur La Table denies that any such penalties
 27 are owed to Plaintiff or putative class members. However, for purposes of this
 28

jurisdictional analysis *only*, Sur La Table relies solely on Plaintiff's allegations that the penalties are owed.

15. Sur La Table estimates that approximately 1,962 (78 full-time and 1,884 part-time) employees in California resigned or were terminated during the period between February 10, 2009 to February 10, 2012.¹ Jensen Decl., ¶ 8. The average rate of pay for full-time employees during this time period was \$18.65/hour, and the average rate of pay for part-time employees during this time period was \$9.81/hour. *Id.*

16. If, as Plaintiff alleges, individuals who left the employment of Sur La Table during the three years preceding the filing of the Complaint were owed wages and did not receive them, the amount in controversy with respect to the waiting time penalties claim would be approximately **\$3,121,434.00**, calculated as follows:

Full-Time Employees:

Daily rate for full-time employees (\$18.65 rate of pay x 8 hours a day)	\$149.20 daily rate ²
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\$149.20 x 30 days maximum penalty:	\$4,476.00 per employee
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Amount in controversy based on Plaintiffs' allegations equals \$4,476.00 x 78 employees:	\$349,128.00
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¹ The statute of limitations for claims under Labor Code section 203 is three years. Cal. Lab. Code § 203, Cal. Civ. Proc. Code § 338.

² Under one interpretation of California Labor Code section 203, calculation of waiting time penalties for wages owed requires the calculation of an employee's *daily* rate of pay, which is then multiplied by a maximum of 30 days, depending on the length of delay in receipt of wages, in order to determine the amount of penalty owed. *See Mamika v. Barca*, 68 Cal. App. 4th 487, 493 (1998) (the waiting time penalty is "equivalent to the employee's daily wages for each day he or she remained unpaid up to a total of 30 days"; the "critical computation" is "the calculation of a daily wage rate, which can then be multiplied by the number of days of nonpayment, up to 30 days."); *Drumm v. Morningstar*, 695 F. Supp. 2d 1014 (N.D. Cal. 2010) (same).

Part-Time Employees:

Daily rate for part-time employees (\$9.81 rate of pay x 5 hours a day³) \$49.05 daily rate

\$49.05 x 30 days maximum penalty: \$1,471.50 per employee

Amount in controversy based on Plaintiffs' allegations equals \$1,471.50 x 1,884 employees: **\$2,772,306.00**

17. The amount in controversy alleged by Plaintiff relating to waiting time penalties is thus **\$3,121,434.00**.

2. Plaintiff's Allegations Regarding Missed Rest Periods Puts Another \$2,110,982.30 in Controversy, Thus Confirming that the \$5 Million Threshold is Met

18. Plaintiff alleges that Sur La Table intentionally and improperly denied rest periods to him and the putative class members in violation of Labor Code section 226.7. Maryott Decl., Exh. B (Complaint, ¶¶ 32-34). Plaintiff failed to specify in his Complaint how many rest breaks were actually missed for which he and the class members were not properly compensated. However, Plaintiff alleges that "[b]y company practice and written policy, Defendants systematically denied Plaintiff, and all other similarly situated non-exempt hourly employees, the rest breaks required under California law." *Id.*, ¶ 2. The remedy available to an employee who is not authorized or permitted to take a rest break to which he or she is entitled on any given day is an additional hour of pay for that day. Cal. Lab. Code § 226.7(b).

19. Sur La Table estimates that there are approximately 2,963 non-exempt employees (133 full-time and 2,830 part-time) in California from February 2008 to February 2012. Jensen Decl., ¶ 6. The average rate of pay for full-time employees

³ The average shift length during the relevant time period was approximately 5 hours per day. Jensen Decl., ¶ 6.

during this time period was \$18.43/hour, and the average rate of pay for part-time employees during this time period was \$9.79/hour. *Id.* During this time period, non-exempt employees in California worked an average of 35 weeks with the company. *Id.*

20. If each of the 2,963 non-exempt employees missed two rest breaks per week⁴ for which he/she was not compensated the additional hour of pay (at an average of 35 weeks worked per employee), the amount in controversy on this claim would be **\$2,110,982.30**, calculated as follows:

Missed rest breaks for full-time employees (133 employees x 2 missed breaks per week x 35 weeks x \$18.43 average rate of pay):	\$171,583.30
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Missed rest breaks for part-time employees (2,830 employees x 2 missed breaks per week x 35 weeks x \$9.79 average rate of pay):	\$1,939,399.00
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Amount in controversy based on Plaintiff's allegations:	\$2,110,982.30
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21. The amount in controversy alleged by Plaintiff relating to rest break violations is thus **\$2,110,982.30**.

3. Plaintiff's Claim for Sur La Table's Alleged Failure to Provide Accurate Wage Statements Adds Another \$1,523,080 to the Amount in Controversy, Further Confirming that the \$5 Million Threshold is Met

22. Plaintiff also alleges class claims to recover penalties for failure to provide accurate itemized wage statements. Maryott Decl., Exh. B (Complaint, ¶¶ 35-35). For failure to provide accurate itemized wage statements, Labor Code section

⁴ Because the pool of putative class members includes both full-time and part-time employees, Sur La Table does not estimate that five rest break violations occurred each week (*i.e.*, one missed rest break each day). Rather, Sur La Table assumes for purposes of this calculation a conservative estimate of two missed rest breaks per employee per week.

226(e) provides for the imposition of penalties for each employee in the amount of \$50 for the first pay period and \$100 for each subsequent pay period, not to exceed \$4000 per employee. Cal. Lab. Code § 226(e).

23. During the one-year period prior to the filing of the Complaint,⁵ Sur La Table employed approximately 1,313 non-exempt employees in California. Jensen Decl., ¶ 7. These employees worked an average of 12.10 pay periods each from February 2011 to February 2012, for an aggregate total of 15,887.30 pay periods. *Id.*

24. Assuming for purposes of removal that there was at least one rest period violation that resulted in an inaccurate wage statement per pay period, the amount in controversy with respect to the wage statement claim would be approximately **\$1,523,080**, calculated as follows:

Penalty for initial violation for each employee (1,313 employees or pay periods x \$50):	\$65,650.00
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Penalty for each subsequent violation for each employee (14,574.30 subsequent pay periods [15,887.30 total pay periods-1,313 initial pay periods]) x \$100:	\$1,457,430.00
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Amount in controversy based on Plaintiff's allegations:	\$1,523,080.00
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25. The amount in controversy alleged by Plaintiff relating to inaccurate wage statements is thus **\$1,523,080**.

26. In performing these calculations, Sur La Table did not consider Plaintiff's assertion that he would be entitled to damages for alleged unlawful business practices under California Business & Professions Code section 17200 *et seq.* Maryott Decl., Exh. B (Complaint, ¶¶ 39-40). The statute of limitations for claims under the Business & Professions Code section 17200 *et seq.* is four years. Bus. & Prof. Code § 17208.

⁵ The statute of limitations for an action upon a statute for a penalty is one year. Cal. Civ. Proc. Code § 340(a).

1 Therefore, if Plaintiff's claims under this section are included, then the calculations
2 noted above would increase due to an extended limitations period.

3 27. Sur La Table also did not consider Plaintiff's claim that he is entitled to
4 attorneys' fees with respect to the majority of his claims in these calculations. The
5 attorneys' fees Plaintiff seeks may, however, be properly included when determining
6 the amount in controversy under CAFA. *Lowdermilk v. US Bank Nat'l Ass'n*, 479
7 F.3d 994, 1000 (9th Cir. 2007) (holding that where an underlying statute authorizes an
8 award of attorneys' fees, such fees may be included in the amount in controversy).

9 28. Based on the foregoing, the jurisdictional amount in controversy
10 requirement is met and removal to this Court is proper under CAFA. *See Lewis*, 627
11 F.3d at 401 (*citing Spivey v. Vertrue, Inc.*, 528 F.3d 982, 986 (7th Cir. 2008)) ("once
12 the proponent of federal jurisdiction has explained *plausibly* how the stakes exceed \$5
13 million . . . *then the case belongs in federal court unless it is legally impossible for the*
14 *plaintiff to recover that much*") (emphasis added).

15 **D. The Amount In Controversy for Plaintiff's Individual Claims Exceeds**
16 **\$75,000**

17 29. This Court also has original jurisdiction over Plaintiff's individual claim
18 based upon diversity of citizenship, pursuant to 28 U.S.C. § 1332, because this is a
19 civil action between citizens of different states (as established above) and the amount
20 in controversy exceeds \$75,000, exclusive of interest and costs.

21 **1. Plaintiff's Allegations Regarding Lost Wages and Benefits Place in**
22 **Controversy at Least \$36,379.00**

23 30. Plaintiff's claim for lost wages and benefits must be based on his annual
24 compensation during the time of his employment with Sur La Table. At the time of
25 Plaintiff's termination, Plaintiff was compensated at \$21.50/hour and was working an
26 average of 32.54 hours a week. Jensen Decl., ¶ 9. Accordingly, Sur La Table
27 estimates that Plaintiff was eligible to receive a total annual compensation of
28 approximately \$36,379. *Id.* Given that the first Case Management Conference is not

1 scheduled to proceed until July 13, 2012 (*see* Maryott Decl., Exh. E), Sur La Table
 2 estimates that, even if trial proceeds quickly, this matter will not be resolved until at
 3 least one year after Plaintiff's termination from employment, which was on or about
 4 October 19, 2011. *Id.*, Exh. B (Complaint, ¶ 16). Therefore, the amount in
 5 controversy based on Plaintiff's compensatory damages claim includes at least
 6 \$36,379.00

7 **2. Plaintiff's Allegations Regarding Emotional Distress and Physical**
 8 **Injury Puts in Controversy At Least Another \$20,000-36,000**

9 31. Plaintiff seeks damages to compensate him for alleged "emotional
 10 distress and injuries." Maryott Decl., Exh. B (Complaint, "Prayer for Relief" ¶ 2).
 11 Emotional distress damages are properly considered in determining whether the
 12 amount in controversy meets the jurisdictional threshold. *See Simmons v. PCR*
 13 *Technology*, 209 F. Supp. 2d 1029, 1034 (N.D. Cal. 2002). Emotional distress awards
 14 in successful wrongful termination cases have been substantial—in some instances,
 15 even more than doubling the amount awarded in lost wages. *See, e.g., Garcia v.*
 16 *Macy's Dept. Stores Inc.*, 2008 WL 4722159 (Cal. Super. Ct. 2008) (plaintiff awarded
 17 \$35,000 for emotional distress in wrongful termination case when only \$3,671 in lost
 18 wages were awarded); *Carter v. Housing Authority of the City of Madera*, 2011 WL
 19 3606914 (Cal. Super. Ct. 2011) (plaintiff awarded \$218,000 for emotional distress in
 20 retaliation case when only \$109,000 was awarded in past lost earnings); *Campos v.*
 21 *Valley Family Health Center Medical Group, Inc.*, 2007 WL 3275361 (Cal. Super. Ct.
 22 2007) (plaintiff awarded \$36,700 for emotional distress in retaliation case when only
 23 \$7,340 was awarded in economic damages); *Rosales v. Career Systems Dev. Corp.*,
 24 2010 WL 3918596 (E.D. Cal. 2010) (plaintiff awarded \$84,000 for emotional distress
 25 in wrongful termination case where \$154,000 was awarded for past lost earnings).

26 32. Sur La Table denies that any such damages are owed to Plaintiff for his
 27 emotional distress claim, and Sur La Table does not suggest that Plaintiff would ever
 28 recover on such a claim. However, for purposes of this jurisdictional analysis *only*,

1 Sur La Table relies on the cases cited above, and finds that even with the most
 2 conservative estimates, Plaintiff has placed into controversy anywhere from \$20,000
 3 to \$36,000 (*i.e.*, a range between half of one year of lost wages and the full amount of
 4 one year of lost wages).

5 33. Sur La Table's estimate of \$20,000-36,000 is particularly conservative
 6 given the fact that Plaintiff has alleged "severe emotional distress" in addition to
 7 "physical pain and suffering, and injuries." Maryott Decl., Exh. B (Complaint, ¶ 30)
 8 (emphasis added). Plaintiff's allegations of physical pain and suffering, which are not
 9 incorporated into the estimates above, also increase the amount in controversy.

10 **3. Plaintiff's Claim for Punitive Damages, Which Adds At Least**
 11 **Another \$72,000, Confirms That The Amount in Controversy**
 12 **Requirement is Met**

13 34. Plaintiff seeks "exemplary or punitive damages pursuant to Civ. Code §
 14 3294." Maryott Decl., Exh. B (Complaint, "Prayer for Relief" ¶ 3). Plaintiff may seek
 15 punitive damages in connection with a claim for wrongful termination in violation of
 16 public policy, and thus his claim for punitive damages is properly considered when
 17 determining the amount in controversy. *See Davenport v. Mutual Ben. Health Acc.*
 18 *Ass'n.*, 325 F.2d 785, 787 (9th Cir. 1963) (punitive damages are included in
 19 calculating the amount in controversy); *Gibson v. Chrysler Corp.*, 261 F.3d 927, 945
 20 (9th Cir. 2001) ("It is well established that punitive damages are part of the amount in
 21 controversy in a civil action."); *Romo v. FFG Ins. Co.*, 397 F. Supp. 2d 1237, 1240
 22 (C.D. Cal. 2005) (where authorized, punitive damages are considered as part of the
 23 amount in controversy in meeting the prerequisite for diversity jurisdiction). "To
 24 establish probable punitive damages, defendant may introduce evidence of jury
 25 verdicts in cases involving analogous facts." *Simmons*, 209 F. Supp. 2d at 1033.

26 35. Other cases involving single-plaintiff wrongful termination claims have
 27 covered a wide range in terms of awards on punitive damages, many of which have
 28 doubled or more than doubled the amount awarded in economic damages. *See, e.g.*,

1 *Amigon v. Cobe Color Cosmetics*, 2009 WL 7497138 (Cal. Super. Ct. 2009) (jury
 2 awarded plaintiff \$52,000 in punitive damages in wrongful termination case when
 3 only \$26,000 was awarded in economic and non-economic damages); *Campos*, 2007
 4 WL 3275361 (plaintiff awarded \$20,000 in punitive damages in retaliation case when
 5 only \$7,340 was awarded in economic damages); *Schomer v. G.A.P. Enters.*, 2008 WL
 6 3539289 (Cal. Super. Ct. 2008) (total of \$50,000 awarded in punitive damages when
 7 compensatory damages were less than \$20,000). *See also Simmons*, 209 F. Supp. 2d
 8 at 1033 (“The fact that the cited cases involve distinguishable facts is not dispositive.
 9 Notwithstanding these differences, the jury verdicts in these cases amply demonstrate
 10 the potential for large punitive damage awards”)

11 36. Sur La Table denies that any punitive damages are owed to Plaintiff, and
 12 Sur La Table does not suggest that Plaintiff would ever recover on such a claim.
 13 However, for purposes of this jurisdictional analysis *only*, Sur La Table relies on the
 14 cases cited above, and finds that even with the most conservative estimates, Plaintiff
 15 has placed an additional \$72,000 in controversy (*i.e.*, double the amount of lost
 16 wages).

17 37. In addition to the claims above, Plaintiff also seeks “attorney’s fees and
 18 costs pursuant to Code Civ. Proc. § 1021.5 and Lab. Code § 226(e).” Maryott Decl.,
 19 Exh. B (Complaint, “Prayer for Relief” ¶ 8). Plaintiff’s claim for attorneys’ fees is
 20 properly considered when determining the amount in controversy. *See Galt G/S v. JSS*
 21 *Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998) (“[W]here an underlying statute
 22 authorizes an award of attorneys’ fees, either with mandatory or discretionary
 23 language, such fees may be included in the amount in controversy.”). Specifically,
 24 “the measure of fees should be the amount that can reasonably be anticipated at the
 25 time of removal, not merely those already incurred.” *Simmons*, 209 F. Supp. 2d at
 26 1035 (holding that attorneys’ fees reasonably anticipated over the life of the litigation
 27 are included in the amount in controversy analysis.) Attorneys’ fees in cases relating
 28 to individual wrongful termination claims, which are taken through trial, routinely

exceed \$50,000 or more. *See Martin v. The Old Turner Inn*, 2003 WL 22998402 (Cal. Super. Ct. 2003) (awarding \$147,610 in attorneys' fees and costs in a single-plaintiff wage and hour case in which plaintiff only recovered \$49,508 in compensatory and punitive damages); *Bandoy v. Huh*, 1996 WL 675978 (Cal. Super. Ct. 1996) (awarding \$73,680 in attorneys' fees in a wage-and-hour case); *Campos*, 2007 WL 3275361 (plaintiff awarded \$117,165 in costs and attorneys' fees in retaliation case when only \$7,340 was awarded in economic damages). But even without including Plaintiff's attorney's fees in the calculations, the amount in controversy threshold is satisfied by the other components.

38. Plaintiff also alleged missed rest breaks, failure to provide accurate wage statements, and waiting time penalties (and all other applicable penalties). These individual claims increase the amount in controversy by approximately \$5,811.⁶

⁶ Amount calculated as follows:

Missed rest breaks. Plaintiff claims that he used to be provided with two rest breaks a day, but was only provided one rest break a day when the new manager arrived "some time in 2011." Maryott Decl., Exh. B (Complaint, ¶ 20). The new manager started on September 1, 2011. Jensen Decl., ¶ 9. Assuming Plaintiff missed two rest periods per week on separate work days beginning on September 1, 2011, he is alleging \$301.00 in damages for this claim: \$21.50 (Plaintiff's hourly rate) x 14 work days with new manager (assuming 2 work days per week) = \$301.00.

Failure to provide accurate wage statements. Plaintiff claims that Sur La Table failed to provide him with accurate itemized wage statements showing all premium wages owed to him for Sur La Table's failure to provide the legally required rest breaks. If this is true, then it would have impacted his wage statements for four pay periods from September 1, 2011 to the date of his termination. The law provides for a \$50 penalty for the first pay period, and \$100 for each subsequent pay period. Cal. Lab. Code § 226(e). Plaintiff is thus alleging \$350.00 in damages for this claim: \$50 penalty for first pay period + \$300 penalty for subsequent three pay periods = \$350.00.

Waiting time penalties. Plaintiff claims that when he was terminated, he was not properly paid for the rest breaks which were not provided to him. The law provides for up to 30 days of wages. Cal. Lab. Code § 203. Based on these facts, Plaintiff is alleging \$5,160.00 in damages for this claim: \$21.50 rate of pay x 8 hours a day x 30 days = \$5,160.00.

39. Based on the foregoing, the jurisdictional amount in controversy requirement is met and removal to this Court is proper under 28 U.S.C. §§ 1332, 1441, and 1446.

THIS COURT HAS JURISDICTION AND REMOVAL IS PROPER

40. The United States District Court for Northern District of California, San Francisco Division is the federal judicial district in which the San Francisco County Superior Court sits. This action was originally filed in San Francisco County Superior Court, rendering venue in this federal judicial district and division proper. 28 U.S.C. § 84(c); *see also* 28 U.S.C. § 1441(a).

41. True and correct copies of the Summons, Complaint, and Answer are attached as Exhibits A, B and D to the Maryott Declaration filed concurrently herewith. This constitutes the complete record of all records and proceedings in the state court.

42. Upon filing the Notice of Removal, Sur La Table will furnish written notice to Plaintiff's counsel, and will file and serve a copy of this Notice with the Clerk of the San Francisco County Superior Court, pursuant to 28 U.S.C. § 1446(d).

WHEREFORE, Sur La Table hereby removes this action from the Superior Court of California in and for the County of San Francisco.

DATED: March 13, 2012

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LYNN HANG

By: 
Michele L. Maryott

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SUR LA TABLE, INC.

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